

# **Should Virginia become a “cooperating agency” in connection with environmental review of Lease Sale 220?**

**A report by the Environmental Law Institute  
to the Virginia Coastal Energy Policy Group**

**December 11, 2008**

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### **Lease Sale 220 of Oil and Gas Resources on the Outer Continental Shelf**

The federal government’s plan to lease tracts on the Outer Continental Shelf off the coast of Virginia for oil and gas exploration and development is a “major federal action” that will “significantly affect the quality of the human environment” and hence triggers the need to prepare an Environmental Impact Statement (EIS) under the National Environmental Policy Act (NEPA). The EIS will be prepared by the Minerals Management Service (MMS) of the U.S. Department of the Interior, as the lead agency with decisionmaking authority. Under NEPA, the purpose of the EIS is to identify: “(i) the environmental impact of the proposed action, (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented, (iii) alternatives to the proposed action, (iv) the relationship between local short-term uses of man’s environment and the maintenance and enhancement of long-term productivity, and (v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.” 42 U.S.C. § 4332(2)(C).

The EIS for the lease sale will be followed by a subsequent EIS and decision process for oil and gas exploration by winning bidders, and a third for development of any commercially viable oil and gas that may be discovered. The current process is the beginning of a chain of decisions that will significantly influence the use of, and impacts upon, Virginia’s coastal areas.

On November 13, 2008, the MMS published in the Federal Register a notice soliciting identification of areas to be considered for leasing, and requesting comments related to MMS scoping of the EIS. 73 Fed. Reg. 67201-67204. The notice (NOI) also invited “other Federal, State, Tribal, and local governments to consider becoming cooperating agencies in the preparation of the EIS.” 73 Fed. Reg. 67203. Comments are due **December 29, 2008**. This memorandum provides information for Virginia in determining whether to request cooperating agency status.

### **What is a Cooperating Agency?**

A “cooperating agency” is a government or governmental entity that by virtue of its expertise or jurisdiction over an aspect of a proposed federal action serves as a partner with the lead agency in managing and carrying out the analysis of the environmental impacts of the proposed major federal action. The concept of “cooperating agency” originated with the Council on Environmental Quality (CEQ) regulations, which interpret NEPA and which are binding on federal agencies, including MMS.

Under these regulations, the lead federal agency must request participation by potential cooperators, use the “environmental analysis and proposals” of cooperating agencies “to the

maximum extent possible consistent with its responsibility as lead agency,” and meet with the cooperating agency when the cooperating agency so requests. For its part, the cooperating agency is to participate in the NEPA process at the earliest possible time, participate in scoping, assume upon request of the lead agency responsibility for information and analysis for which it has special expertise, and make staff support available; ordinarily the cooperating agency will use its own funds, but it also may receive funding from the lead agency for “major activities or analyses [the lead agency] requests.” 40 CFR 1501.6, 1508.5.

The MMS November 13 notice says the following:

The DOI [Department of Interior] policy is to invite other Federal agencies, and State, Tribal, and local governments to consider becoming cooperating agencies in the preparation of an EIS. Under the Council of Environment Quality (CEQ) regulations, qualified agencies and governments are those with “jurisdiction by law or special expertise.” Potential cooperating agencies should consider their authority and capacity to assume the responsibilities of a cooperating agency. Cooperating agency status neither enlarges nor diminishes the final decision-making authority of any agency involved in the NEPA process. The MMS invites qualified government entities to inquire about cooperating agency status for this lease sale EIS. Upon request, the MMS will provide qualified cooperating agencies with a written summary of ground rules for cooperating agencies, including time schedules and critical action dates, milestones, responsibilities, scope and detail of cooperating agencies’ contributions, and handling of predecisional information. The MMS anticipates this summary will form the basis for a Memorandum of Understanding between the MMS and each cooperating agency....Even if your agency is not a cooperating agency you will continue to have opportunities to provide information and comments to MMS during the normal public input phases of the NEPA/EIS process.  
73 Fed. Reg. 67203 (Nov. 13, 2008).

Although the MMS notice says that it will provide cooperating agency ground rules and other information on request, in fact the MMS does not have a package of standard cooperating agency information either at the Gulf of Mexico regional office handling Lease Sale 220 or at MMS headquarters, and cannot now provide such information, according to MMS officials.

MMS staff advise that they do not have any formal “cooperating agency” MOU relationships with states in the Gulf of Mexico region, although they do in practice cooperate with states and state agencies where relevant, and list their contributions to technical support and resource studies for these actions. *E.g.*, Western Central Gulf of Mexico Offshore Lease Sales: Western Planning Area Sale 208, 72 Fed. Reg. 51,654 (Sept. 10, 2007). MMS has recently entered into a “cooperating agency” MOU in Alaska with respect to a new lease sale. Memorandum of Agreement, Minerals Management Service and Aleutians East Borough, Lease Sale 193, Chukchi Sea (May 30, 2008). Massachusetts’ Coastal Zone Management Program and its Environment Policy Act Office were cooperating agencies on MMS’s Cape Wind EIS, 71 Fed. Reg. 30, 693 (May 30, 2006).

## **How does one become a cooperating agency?**

Federal regulations specify that federal lead agencies should identify as early as practicable those federal, state, tribal, and local government agencies that have jurisdiction by law and special expertise and *invite* them to become cooperating agencies. 40 CFR 1501.6, 1508.5. *See also* Memorandum for the Heads of Federal Agencies, Council on Environmental Quality (January 30, 2002). A qualified government or governmental entity may then request cooperating agency status.

The Department of Interior's newly revised NEPA regulations, which govern MMS actions, provide additional information. The responsible official of MMS "must consider any request by an eligible governmental entity to participate in a particular environmental impact statement as a cooperating agency." While the official can deny the request, the official must give reasons in the environmental impact statement. The MMS must "work with cooperating agencies to develop and adopt a memorandum of understanding that includes their respective roles, assignment of issues, schedules, and staff commitments so that the NEPA process remains on track and within the time schedule." An MOU is required if the cooperating agency is non-federal, "and must include a commitment to maintain the confidentiality of documents and deliberation during the period prior to the public release by the [MMS] of any NEPA document, including drafts." 43 CFR 46.225 (73 Fed. Reg. 61219-20 (Oct. 15, 2008)).

It is very likely that (1) based on Virginia's jurisdiction for Coastal Zone Management Act consistency it will qualify as an entity with jurisdiction by law, and (2) that the jurisdiction of certain Virginia agencies over *future* activities potentially associated with the alternatives resulting from the process set in motion by the lease sale decision (such as VMRC jurisdiction over subaqueous bottoms) also qualify Virginia agencies as having jurisdiction (even if they lack control over the current leasing decision). In addition, (3) Virginia and the agencies participating on the Coastal Policy Team are well within the "special expertise" prong of the cooperating agency regulation based on prior federal agency practice under NEPA. MMS regional staff members confirm this impression, although the federal agency cannot make a definitive determination until it receives a request for cooperating agency status.

Denial of a request for cooperating agency status is not itself a final agency action, nor is it appealable. *See* 43 CFR 46.225(c).

## **When must a request be made?**

A request to be a cooperating agency should be made within the comment period on the Notice of Intent to prepare an EIS (currently December 29, 2008, unless extended). While there is not a formal deadline, the regulations contain the expectation that the cooperator will be involved in the scoping process. 40 CFR 1501.6(b)(2). Also, the later a request comes, the less likely it is that a cooperating agency relationship will have any effect on the review or decisionmaking process. Lease Sale 220 is in an unusual posture, with the MMS anticipating opening a second comment period for scoping after the initial Notice of Intent. 73 Fed. Reg. 67203 ("Scoping meetings to obtain additional comments and information regarding the scope of the EIS...will be announced at a later date. An additional comment period will be announced at that time."). Because of this, a

request for cooperating agency status could likely be entertained at that time without much difficulty. *However, a request for cooperating agency status or request to enter into discussions on the subject would best be received within the initial NOI comment period.*

It is legally possible to become a cooperating agency later in the process, but obtaining approval may become more difficult. In *Wyoming v. U.S. Dept. of Agriculture*, 570 F. Supp.2d 1309 (D. Wyo. 2008), the state of Wyoming sought cooperating agency status 50 days after the comment period on a NOI had closed; and the Forest Service denied such status. A district court held that the Forest Service had arbitrarily and capriciously denied Wyoming cooperating agency status because the federal agency failed to respond to the request until after the release of the Draft EIS, and it gave no reasoned explanation for the denial, thus rendering the final agency action vulnerable on this as well as other NEPA grounds. *Id.* at 1334-1335.

### **What are the responsibilities of cooperating agencies?**

An MOU will define the responsibilities between the lead agency and cooperating agency. The CEQ regulations place few duties on cooperating agencies, and particularly on non-federal cooperators. Essentially there is a duty to participate in scoping, to comment in a timely fashion, and to provide what analyses may be agreed in the MOU. 40 CFR 1501.6, 1503.2, 1508.5. “After discussions...the lead agency and the cooperating agencies are to determine...by memorandum which agencies will undertake cooperating responsibilities. To the extent possible at this stage, responsibilities for specific issues should be assigned. The allocation of responsibilities will be completed during scoping.” Council on Environmental Quality, *Forty Most Asked Questions Concerning CEQ’s NEPA Regulations* (hereinafter “Forty Questions”), 46 Fed. Reg. 18026 (March 23, 1981), Q. 14a.

MMS staff members advise ELI that MOUs for non-federal cooperating agencies would normally indicate when comments would be expected and similar activities such as review of documents, and would not ordinarily assign responsibility for a particular part of the EIS to the non-federal cooperator. The MOU with Aleutians East Borough (styled a “Memorandum of Agreement”) lists some pro forma commitments for the cooperating agency: (1) to attend and participate in necessary meetings (teleconference is allowed), (2) to invite MMS to public meetings held by the cooperating agency on the EIS, (3) to prepare drafts, provide data, and review and comment on such drafts “as agreed upon,” (4) to provide copies of relevant local laws and rules, (5) to advise MMS of relevant statutory and regulatory responsibilities of the cooperating agency, (6) to assist MMS in preparation of text that summarizing relevant state and local laws, (7) to assist MMS in planning, coordinating, and scheduling public meetings, and (8) to assist MMS in distributing information to the public and communities. For its part, MMS agreed to (1) work with the cooperating agency to establish milestones and action dates, (2) identify its manager for coordination, (3) keep the cooperating agency apprised of comments and documents, (4) review and consider “input and concerns” of the cooperating agency on “regulatory and/or relevant environmental issues and mitigation,” (5) consult with the cooperating agency on “developing the EIS alternatives, assessing environmental impacts, and developing mitigation measures,” as well as to provide copies of NEPA documents in formats that can be track-changed, and (6) to consult with the cooperating agency “when developing alternatives to be analyzed in the Draft EIS and in the Final EIS.” (Note that this duty appears twice in the list). The agreement also commits the

MMS to determine whether there are cooperating agency work products eligible for federal funding/reimbursement if funds become available. Memorandum of Agreement, Minerals Management Service and Aleutians East Borough, Lease Sale 193, Chukchi Sea, sections D & E (May 30, 2008). This is a fairly simple MOU, and because these are negotiated, Virginia may want to include additional or different provisions if it enters into an MOU in connection with Lease Sale 220.

### **What advantages does cooperating agency status afford?**

Although the lead agency retains control over the content of the EIS it is “supposed to use the environmental analysis and recommendations of cooperating agencies...*to the maximum extent practicable*.” Forty Questions, Q. 14b. The CEQ has observed that “if the lead agency leaves out a significant issue or ignores the advice and expertise of the cooperating agency, the EIS may be found later to be inadequate.” *Id.* This provides cooperating agencies some leverage in ensuring that particular alternatives or issues are covered, and defined in ways that support the cooperating agencies’ view of the situation.

Ordinarily, lead agencies should endeavor to accommodate the views and preferences of cooperating agencies where consistent with their legal obligations. Thus, for example, while the NEPA regulations require the lead agency to use scoping to identify issues for analysis and eliminate others, 40 C.F.R. 1501.7, and identify all “reasonable alternatives” and identify those eliminated from detailed study, *id.* 1502.14, the cooperating agency has more sway than an ordinary commenter in directing the lead agency toward inclusion of particular issues and alternatives for study. *Cf., Int’l Snowmobile Mfgs. Ass’n v. Norton*, 340 F. Supp.2d 1249, 1261-62 (D. Wyo. 2004) (Park Service addition and modification of an EIS alternative not adequately discussed with two cooperating-agency states makes decision suspect). The new Department of Interior NEPA regulations say that MMS “will collaborate, to the fullest extent possible, with all cooperating agencies *concerning those issues relating to their jurisdiction and special expertise*.” 43 CFR 46.230, as added 73 Fed. Reg. at 61320 (Oct. 15, 2008).

Ordinarily, cooperating agency status will increase the likelihood that a particular alternative or issue of interest to the cooperator will be included in the study plan and addressed in the analysis. Even when the lead agency disagrees it may be obliged to make clear in the NEPA documents themselves that there was a difference of opinion. Memorandum of Agreement, Minerals Management Service and Aleutians East Borough, Lease Sale 193, Chukchi Sea (May 30, 2008).

The NEPA process typically includes three periods for comments and consideration of comments – once during scoping, when issues and alternatives are identified for analysis; a second after publication of the Draft EIS; and in effect, a third during the waiting period after the Final EIS and before the adoption of the Record of Decision. For an external commenter, however, there are periods when the process becomes opaque, and MMS works out of the public view. For example, after the close of the scoping period, the lead agency confers with its own project team, considers the comments, and develops a work plan for the contractor or agency personnel preparing the Draft EIS, which includes and excludes certain alternatives and issues. External commenters have no seat at the table and do not participate in the determination of which alternatives are in and out. But a cooperating agency is present at that determination and engages in the development and

selection of alternatives. It may be able to ensure that an alternative is included that would not otherwise have been addressed; and it may be able to persuade the lead agency that certain issues deserve particular study that the lead agency might have regarded as less important or believed existing data would be sufficient. Similar opportunities exist at other points in the process. The lead agency remains in control of the document and the analysis, but the cooperating agency is engaged more continuously in the design of the studies and the choices being made concerning what to study.

This role is most important at the scoping phase. Alternatives and issues left out of scoping, or that get only meager analysis or study, are unlikely to emerge in the Draft and Final EIS; nor are they as likely to receive attention at the exploration and development phases of the oil and gas decision process if they were not incorporated into the analytic framework beginning with the lease sale phase. For example, Virginia might believe that the lease sale EIS should include consideration of whether and to what extent the structure of Sale 220 would facilitate or impede the subsequent or concurrent development of offshore wind power – including location of staging areas, co-location of future pipelines and transmission cables, anticipation of navigation hazards or issues if vessels associated with oil and gas are traversing areas with multiple wind platforms, and potential dual use of structures. Acting as a commenter, it could during the scoping period propose these issues, or recommend a set of *alternatives* based on these issues, and the MMS would have to decide whether or not it considered these issues ripe and sufficiently connected to the lease sale under consideration. MMS might decide that it might handle these concerns as potential “foreseeable cumulative impacts” in a section of the EIS, but not review them as a formal alternative or discrete set of issues. But if Virginia became a cooperating agency, with a seat at the table in determining the set of *alternatives* to be considered and influence over the studies to be conducted, the MMS would have a greater duty to entertain Virginia’s approach in designing the EIS and carrying it out. MMS suggests that opportunities to participate during and after scoping, alternatives definition and refinement, review opportunities, and other interactions can be set forth in the MOU.

### **Is a Cooperating Agency bound by the EIS?**

The EIS is meant to “inform” the federal governmental decision. It does not itself constitute the decision document. The CEQ has said that “disagreements about conclusions to be drawn *from* the EIS need not inhibit agencies” from joint reliance on the EIS if the analysis is adequate. Forty Questions, Q.14b. Thus, participation in the EIS as a cooperating agency does not require endorsement of decisions by other parties to the EIS.

States engaged in cooperating agency relationships under NEPA remain free to contest the decisions and choices of the lead agency. For example, on December 8, 2008, Oregon Governor Ted Kulongoski contested the procedures and certain conclusions of the Bureau of Land Management’s Resource Management Plan for O&C Forest Lands in Oregon, even though the state was a cooperating agency on the NEPA documents for the action under an MOU signed December 1, 2005. Letter, Kulongoski to E. Shepard, Bureau of Land Management (Dec. 8, 2008).

Indeed, cooperating agencies remain free to file suit to challenge actions for which the EIS was prepared, as litigation between western states and Department of Interior agencies clearly indicates.

### **Is the state itself, or individual state agencies, the appropriate cooperating agency?**

Although the term is “cooperating agency,” the regulations contemplate that the State may act as cooperating agency. The MMS notice on Lease Sale 220 says that it is Department of Interior policy to invite “State, Tribal, and local governments” to consider becoming cooperating agencies. 73 Fed. Reg. at 67203. States do enter into MOUs as states. Typically states will do this in order to speak with a unified voice and to improve their ability to influence the process. Normally the MOU between the federal lead agency and the state will identify the participating state agencies and their areas of expertise, but also a primary point of contact for the cooperating agency relationship and review responsibilities. *E.g.*, Oregon-BLM MOU (Dec. 1, 2005). States entering into cooperating agency relationships may commit certain agencies and not others. On the other hand, individual agencies may enter into cooperating agency agreements, if they are individually eligible to do so, based on jurisdiction or expertise. *E.g.* Two Massachusetts state agencies, and Cape Cod Commission, for the MMS Cape Wind EIS.

### **Can local governments be cooperating agencies?**

They can. The CEQ and Department of Interior regulations provide that local governments and local agencies can also become cooperating agencies if they meet the appropriate criteria. Such entities are not always able to demonstrate the jurisdiction or expertise to be included on this basis on OCS EIS actions. However, there is precedent for their involvement as cooperating agencies. Memorandum of Agreement, Minerals Management Service and Aleutians East Borough, Lease Sale 193, Chukchi Sea (May 30, 2008). The Borough’s interests were primarily related to impacts on landowners, fishing, and local development, but it did not have permitting or decision authority related specifically to the lease sale. The agreement specified responsibilities and milestones, mostly consisting of MMS commitments to keep the Borough informed, to review and consider Borough input on issues and mitigation, and that it “shall consider” Borough comments; for its part the Borough committed to attend “necessary” meetings, to provide information on state and local laws, to assist in scheduling and holding meetings. So the City of Virginia Beach, or the Hampton Roads PDC, or affected counties might seek to be cooperating agencies.

The state can also undertake to act as cooperating agency on behalf of the interests of local governments that want a seat at the table. For example, when the federal government turned down the request of Wyoming local county commissions and conservation districts to serve as cooperating agencies on the Bighorn National Forest EIS, while recognizing the state as a cooperating agency, the state entered into its own agreement with the county bodies to represent their interests “as an equal partner” in its interactions with the Forest Service. The federal-state MOU ratified this approach with a clause “recogniz[ing] the following State [sic] agencies as having resources and information which may be utilized by the [official state cooperating] entities named ...in order to fulfill their designated roles in this MOU” and listing the local government bodies. Arthur D. Reese, *NEPA and Related Requirements: Cooperating Agency Status*, ALI-ABA/ELI Course of Study (Dec. 13-14, 2001), Appendix C (Memorandum of Understanding



between United States Department of Agriculture, Forest Service, Bighorn National Forest and the State of Wyoming, E.2).

In most cases, states or state agencies are more likely to be cooperating agencies than are local governments.

### **Financial implications**

MMS staff advise that they do not have any expectation “that a cooperating agency will do any work for us.” They do expect to engage and pay a NEPA contractor for work on preparation of the DEIS and EIS. The CEQ regulations say that a lead agency or cooperating agency engaging a contractor must have the contractor execute a statement that it has no financial interest in the outcome of the project. 40 CFR 1506.5(c). State agencies and other cooperating agencies may receive funding to perform analysis needed to support the EIS. 40 CFR 1501.6(b)(5).

State universities and research institutions have performed federally-funded work even when the state is a cooperating agency. Having the state, or a state agency, as a cooperating agency is no bar to receipt of federal funds for analysis in connection with the preparation of an EIS. As usual, however, it is best to spell out these expectations in the MOU itself. Typical MOU language states that the MOU does not create fiscal obligations for either party. An MOU between the Bureau of Land Management and Oregon for Revision of the Resource Management Plan and Associated Environmental Impact Statements for the Western Oregon BLM Districts (Dec. 1, 2005) provides,

This agreement is neither a fiscal nor a funds obligation document. Any endeavor to transfer anything of value involving reimbursement or contribution of funds between the parties to this agreement will be handled in accordance with applicable laws, regulations, and procedures....Such endeavors will be outlined in separate documents ...and shall be independently authorized by appropriate statutory authority...this agreement does not establish authority for noncompetitive award to the cooperator of any contract or other agreement.

### **Confidentiality**

Cooperating agency relationships normally require confidentiality on the part of the cooperating agency so that its participation in predecisional discussions with the lead agency does not produce adverse consequences for the planning and deliberative process. Department of Interior regulations and MOUs provide for such confidentiality “during the period prior to the public release by [MMS] of any NEPA document, including drafts.” 43 CFR 46.225(d). However, documents are subject to release under the Freedom of Information Act to the same extent they would be absent the existence of a cooperating agency relationship. Meetings between state and local officials and federal officials are not subject to the Federal Advisory Committee Act.

### **Disputes**

Cooperating agency MOUs often contain some provision pledging mutual efforts to resolve disputes through “good-faith” discussions. However, ultimately the lead agency retains

responsibility for whatever appears in the NEPA documents. The MMS-Aleutians East Borough MOU signed in May of 2008 commits the MMS to consult with the cooperating agency in “developing the EIS alternatives, assessing environmental impacts, and developing mitigation measures” but explicitly notes the MMS retains sole responsibility for determining which alternatives and mitigation measures will appear in the EIS, notice of sale, and seismic survey permits. The document provides that disputes will be resolved if possible, but that if resolution is not achievable on scope, analysis, or conclusions, the MMS and Borough “shall jointly determine if the differing positions should be presented in the EIS documents.” Memorandum of Agreement, Minerals Management Service and Aleutians East Borough, Lease Sale 193, Chukchi Sea, at 8 (May 30, 2008).

But the reference to disputes, dispute resolution, and agreements does not preclude a cooperating agency (or state) from availing itself of any recourse it may wish to seek, including litigation addressing the final decision and the adequacy of the NEPA analysis. *Id.* at 6.

### **Ending Cooperating Agency Status**

Issues for consideration in ending cooperating agency status are similar to those in initiating it. Among the additional issues that may trigger federal decisions to end such status are whether the cooperating agency can provide sufficient resources to support scheduling and critical milestones, whether it provides adequate lead-time for review and whether it is “willing or unwilling to consistently participate in meetings in a timely fashion after adequate time for review of documents, issues and analyses.” Additional issues are whether the cooperating agency can “accept” the “lead agency’s final decisionmaking authority regarding the scope of the analysis, including authority to define the purpose and need for the proposed action.” Is a cooperating agency “unable or unwilling to develop information/analysis of alternatives they favor and disfavor?” Also, does the cooperating agency release predecisional documents, including drafts, in a manner that “undermines or circumvents the agreement to work cooperatively.” And does the cooperating agency “consistently misrepresent” the analytic process or the findings. Memorandum for the Heads of Federal Agencies, Council on Environmental Quality (January 30, 2002), Attachment 1.

The same discussion by CEQ notes that “disagreeing with the published draft or final analysis should not be a ground for ending cooperating status.” *Id.*

### **What if Virginia does not become a cooperating agency?**

A CEQ memorandum on cooperating agencies says that whenever an invited federal, state, tribal, or local agency elects not to become a cooperating agency, it should “still be considered for inclusion in interdisciplinary teams engaged in the NEPA process and on distribution lists for review and comment on the NEPA documents.” Memorandum for the Heads of Federal Agencies, Council on Environmental Quality (January 30, 2002).

The MMS notice also affirms: “Even if your agency is not a cooperating agency you will continue to have opportunities to provide information and comments to MMS *during the normal public*

*input phases* of the NEPA/EIS process.” 73 Fed. Reg. 67203 (Nov. 13, 2008). This is the same opportunity any member of the public has.

Virginia will also retain its consistency review authority under the CZMA (which will be triggered by the lease sale decision), and regulatory authority over certain subaqueous permitting and onshore activities under state laws (which will likely not be triggered at this stage of the leasing decision process).

## **Conclusion**

MMS officials have already engaged in early interaction with Virginia, and especially the Virginia Institute of Marine Science, via a meeting on December 3-4 designed to identify potential issues and needs for environmental analysis. MMS Gulf of Mexico Regional staff responsible for the environmental review and management of the Lease Sale 220 process express openness to Virginia or Virginia agencies becoming cooperating agencies, and have welcomed further discussions. There is no completely standard MOU for these purposes.

Cooperating agency status is likely to be most valuable at those points in the decision process when alternatives and issues requiring technical studies are being decided upon. This might be particularly important if MMS treats the environmental review process as more routine or constrained than Virginia may desire – such as in defining what alternatives are relevant at the lease sale stage and which are not. Given the new issues involved in offshore leasing, exploration, and development in a “frontier” OCS area like the Atlantic coast, MMS may be particularly susceptible to advice from a cooperating state.

Cooperating agency status will likely require greater and more continuous involvement by Virginia than simply responding to notices as the NEPA process plays out. This may require identification of staff, points of contact, and planning for periods of time when more interaction may be needed.

Should Virginia seek to pursue cooperating agency status, it should so indicate in its response to the NOI, due December 29, 2008. It would be helpful to note what expectations and reservations Virginia might want to express either then or shortly thereafter.

Comments/Requests relevant to the EIS and cooperating agency status go to:

Minerals Management Service  
Gulf of Mexico OCS Region  
Attention: Mr. Gary Goeke  
1201 Elmwood Park Boulevard  
New Orleans, LA 70123-2394  
504-736-3233  
[Sale220@mms.gov](mailto:Sale220@mms.gov)

The EIS Coordinator for Sale 220 will be:  
Tom Bjerstedt, 504-736-5743

The Coastal Consistency coordinator for Sale 220 will be Bonnie Johnson

MMS Headquarters Environmental Assessment  
Director is Jim Bennett, 703-783-1660